

1886
 BROJENDRO
 KUMAR ROY
 CHOWDHRY
 v.
 RASHI
 BEHARI ROY
 CHOWDHRY.

Several defendants in an action of assumpsit: I am of opinion that the appeal should be allowed.

As the lower Appellate Court has not tried the case on the merits, it must be remanded to enable it to do so. Costs will abide the result.

O'KINEALY, J.—I concur in the decision of my learned colleague. The Judge below finds and only finds that the defendants in the former suit violated their agreement, not that they had committed a wrong independently of contract. This finding does not prevent the present suit. See *Power v. Hoerz* (1).

P. O'K.

Appeal allowed and case remanded.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Beverley.

1886
 August 3.

IN THE MATTER OF KALĀ CHAND AND OTHERS (PETITIONERS) v.
 GUDADHUR BISWAS AND OTHERS (OPPOSITE PARTIES)*

Compensation—Cattle Trespass Act, 1871, ss. 20, 22—False complaint.

A complaint was made against certain persons under s. 20 of the Cattle Trespass Act of 1871, charging them with having illegally seized and detained the complainant's cattle. The Assistant Magistrate who heard the complaint found it to be false, and he ordered the complainant to pay Rs. 20 compensation to the accused, and in default to suffer simple imprisonment for 21 days. On application to the High Court,—

Held, that the order was illegal and must be set aside.

In this case Kala Chand Sheikh and others charged Gudadhur Biswas and others, under the provisions of s. 20 of the Cattle Trespass Act, Act I of 1871, before the Assistant Magistrate of Meherpore, with having illegally seized and detained their cattle. The complaint was investigated by the Assistant Magistrate and found to be false. He acquitted the accused under s. 245 of the Code of Criminal Procedure. He directed that each of the complainants should pay to the accused

Criminal Revision Case No. 313 of 1886, against the order passed by Mr. J. Crawford, Sessions Judge of Nudda, dated the 5th June 1886, rejecting the order of Mr. Hewling Lusson, Assistant Magistrate of Meherpore, dated the 9th April 1886.

(1) 19 W. R. (Eng.) 916.

Rs. 20, and in default of paying the fines that they should suffer simple imprisonment for 21 days (s. 250 of the Code of Criminal Procedure), and he sanctioned the prosecution of the complainants and their witnesses for instituting a false case and for perjury.

The District and Sessions Judge of Nuddea quashed that portion of the Magistrate's order granting sanction to prosecute, but he declined to interfere with that portion of the order which awarded compensation to the accused. Kala Chand Sheikh and the other complainants then presented a petition to the High Court, praying that the order of the Assistant Magistrate awarding compensation should be set aside as illegal, and made without jurisdiction, on the ground, amongst others, that charging a person falsely with illegally seizing and detaining cattle under s. 20 of the Cattle Trespass Act is not an offence.

Baboo *Jushoda Nund Pramanik*, and Baboo *Doorga Doss Dutt* for the petitioners.

The judgment of the Court (PRINSEP and BEVERLEY, JJ.) was as follows:—

For the reasons given in the case of *Pitchi v. Aukappa* (1), in which we concur, the award of compensation under s. 250 of the Criminal Procedure Code, ordered by the Magistrate to be paid by the petitioner in consequence of his having made a frivolous and vexatious complaint of illegal seizure of his cattle, must be set aside, and the fine, if paid, must be refunded.

P. O'K.

CRIMINAL REFERENCE.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

ABDUL WAHAB (COMPLAINANT) *v.* CHANDIA (ACCUSED.)*

1886
August 17.

Magistrate, Jurisdiction of—Powers of Second Class Magistrates—Reference to District Magistrate—Committal to Court of Sessions—Criminal Procedure Code, s. 239.

An Assistant Magistrate convicted a person under ss. 406 and 417 of the Penal Code, and referred the case to the District Magistrate for sentence under the provisions of s. 349 of the Code of Criminal Procedure.

* Criminal Reference No. 147 of 1886, made by C. C. Quince, Esq., Magistrate of Patna, dated the 21st of July 1886.

(1). I. L. R., 9 Mad., 102.